

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WOODBURN CONSTRUCTION CO.,

Plaintiff,

v.

ENCON PACIFIC, LLC, d/b/a Concrete
Products of Western Washington, LLC; and
CONCRETE PRODUCTS OF WESTERN
WASHINGTON, LLC,

Defendants.

ENCON WASHINGTON, LLC f/k/a Concrete
Products of Western Washington, LLC,

Counter-claimant,

v.

WOODBURN CONSTRUCTION CO.;
COUNTY OF COWLITZ, WASHINGTON;
and SAFECO INSURANCE COMPANY OF
AMERICA,

Counter-defendants.

Case No. C05-5811FDB

ORDER DENYING ENCON
PACIFIC, LLC'S MOTION FOR
SUMMARY JUDGMENT AGAINST
PLAINTIFF WOODBURN
CONSTRUCTION CO.

1 Defendant Encon Pacific, LLC moves for summary judgment against Woodburn
2 Construction Co. for failure to state a claim, asserting that it was not a party to the contract that
3 Woodburn alleges was breached.

4 Defendant asserts that Concrete Products of Western Washington, LLC changed its name to
5 EnCon Washington, LLC on January 28, 2005 and that EnCon Pacific has never done business as
6 Concrete Products of Western Washington, LLC. Defendant further asserts that the contract is
7 between Woodburn and EnCon Washington, and that, therefore, EnCon Pacific must be dismissed.


8 Woodburn opposes the motion and has submitted evidence obtained during discovery,
9 including Shop Drawings with the footer legend "Encon Pacific, LLC DBA Concrete Products of
10 Western Washington"; "Shop Tickets" (drawings used by Defendants internally in their production
11 process) with a footer that includes a logo and "Encon Pacific, LLC DBA Concrete Products of
12 WW"; "Revenue Recognition Report" for "Cowlitz City Jail Styro Panels, Woodburn Construction
13 Co., Inc." project, and the report purports to be that of the "Encon Pacific Companies"; "Cost
14 Entries by Job" spreadsheet purporting to be that of "Encon Pacific Companies"; checks to sub-
15 subcontractors on the account of "Encon Pacific D/B/A Concrete Products Company"; and website
16 pages that include the logo along with the legend "Encon Pacific, LLC DBA Concrete Products Co."
17 and a "home page" that states that Concrete Products Co.'s "Corporate Sales, Estimating &
18 Engineering" are performed by "Encon Washington, LLC, 5415 198th St. East, Puyallup, WA
19 98375." Woodburn argues that this evidence demonstrates that Encon Pacific was "doing business
20 as" Concrete Products of Western Washington when it performed the Subcontract's work.

21 The Court concludes that there is a genuine dispute of material fact as to the assertion that
22 Encon Pacific has never done business as Concrete Products of Western Washington, LLC.
23 Defendants' argument that the shop drawings and shop tickets were created by a draftsman not
24 EnCon Pacific's management, that EnCon Washington was retained to supply precast concrete
25 panels, not accounting services, and that the checks indicate a loan to the sub-subcontractors in

1 return for assignment of their rights to payment by Woodburn, and that Concrete Products Co. is not
2 the same as Concrete Products of Western Washington, LLC are weak and insufficient to support
3 summary judgment.

4 ACCORDINGLY, IT IS ORDERED: Defendant EnCon Pacific, LLC's Motion for Summary
5 Judgment against Plaintiff Woodburn Construction Co. [Dkt. # 48] is DENIED.

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7 DATED this 22nd day of January, 2007.

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10 FRANKLIN D. BURGESS
11 UNITED STATES DISTRICT JUDGE
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